

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–45 and 102–38

[FPMR Amendment H–211 and FMR
Amendment B–3]

RIN 3090–AH10

Federal Management Regulation; Sale of Personal Property

AGENCY: Office of Governmentwide
Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending the Federal Property Management Regulations (FPMR) by revising coverage on the sale of personal property and moving it into the Federal Management Regulation (FMR). A cross-reference is added to the FPMR to direct readers to the coverage in the FMR. The FMR coverage is written in plain language to provide agencies with updated regulatory material that is easy to read and understand.

DATES: *Effective Date:* August 26, 2003.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 208–7312, for information pertaining to status or publication schedules. For clarification of content, contact Robert Holcombe, Director, Personal Property Management Policy Division, (202) 501–3828. Please cite PMR H–211.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule updates, streamlines, and clarifies FPMR part 101–45 and moves most of the part into the FMR. FPMR part 101–45 is revised to include a cross reference to the regulations moved to FMR part 102–38. Section 101–45.101 has been revised to clarify the applicability of these regulations to agencies in the executive, legislative, and judicial branches of the Federal Government. Section 101–45.307 has been revised to reflect Congress' clear intent as stated in the codification of title 40 into positive law whereby Congress recognized that GSA and other agencies are permitted to retain direct and reasonably related indirect expenses of sale from the proceeds of sale of surplus personal property. Sections 101–45.309–3, 101–45.309–9, 101–45.309–12, and 101–45.309–13 remain in part 101–45 but are revised and given new section numbers. The final rule is written in a plain language question and answer format. This style uses an active voice, shorter sentences, and pronouns. A question and its

answer combine to establish a rule. The employee and the agency must follow the language contained in both the question and its answer.

A proposed rule was published in the **Federal Register** at 67 FR 47494, July 19, 2002. All public comments received were considered in the formulation of this final rule.

B. Executive Order 12866

GSA has determined that this final rule is not a significant rule for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Parts 101–45 and 102–38

Government property management,
Surplus Government property.

Dated: July 10, 2003.

Stephen A. Perry,

Administrator of General Services.

For the reasons set forth in the preamble, GSA amends 41 CFR chapters 101 and 102 as follows:

CHAPTER 101—FEDERAL PROPERTY MANAGEMENT REGULATIONS

1. Part 101–45 is revised to read as follows:

PART 101–45—SALE, ABANDONMENT, OR DESTRUCTION OF PERSONAL PROPERTY

Sec.

101–45.000 Cross-reference to the Federal Management Regulation (FMR) (41 CFR chapter 102, parts 102–1 through 102–220).

101–45.001 Demilitarization and decontamination.

101–45.002 Gold.

101–45.003 Vehicle reconditioning.

101–45.004 All terrain vehicles.

Authority: 40 U.S.C. 545 and 121(c).

§ 101–45.000 Cross-reference to the Federal Management Regulation (FMR) (41 CFR chapter 102, parts 102–1 through 102– 220).

For information on the sale of personal property previously contained in this part, see FMR part 38 (41 CFR part 102–38).

§ 101–45.001 Demilitarization and decontamination.

(a) Dangerous material shall not be disposed of pursuant to part 102–38 of the Federal Management Regulation (FMR) without first being demilitarized or decontaminated when a duly authorized official of the executive agency concerned determines this action to be in the interest of public health, safety, or security. This may include rendering the property innocuous, stripping from it any confidential or secret characteristics, or otherwise making it unfit for further use.

(b) Demilitarization or decontamination of property to be donated to public bodies pursuant to part 102–37 of the FMR shall be accomplished in a manner so as to preserve so far as possible any civilian utility or commercial value of the property.

(c) Except for those sales otherwise authorized by part 101–42 of the Federal Property Management Regulations or other statutes, and for specialized sales authorized by the Secretary of Defense, U.S. Munitions List items identified as requiring demilitarization shall not be reported for public sale without first being demilitarized or requiring demilitarization to be a part of the terms and conditions of sale. The General Services Administration may refer technical questions on demilitarization to the Department of Defense for advice.

§ 101–45.002 Gold.

(a) Gold will be sold in accordance with this section and part 102–38 of the Federal Management Regulation.

(b) Sales of gold shall be processed to—

- (1) Use the sealed bid method of sale;
- (2) Require a 20 percent bid deposit;
- (3) Certify all forms of bid deposit and payments; and

(4) Include in the invitation for bids only gold and such other precious and semiprecious materials as may be available for sale at that time.

(c) Each agency generating scrap gold and also having a continuing need for fine gold may arrange for the acceptance of scrap gold for fine gold with a private

contractor or the Defense Logistics Agency.

§ 101-45.003 Vehicle reconditioning.

(a) For the purpose of this section, vehicle reconditioning means restoring or improving the appearance of any motorized passenger or cargo vehicle designed primarily for highway use that is to be disposed of through surplus or exchange/sale procedures to the general public.

(b) To produce the maximum net proceeds, holding agencies shall determine, prior to sale, the appropriate level of reconditioning commensurate with the estimated fair market value of each vehicle scheduled for sale.

(c) Holding agencies shall arrange for the reconditioning to be accomplished just prior to the dates scheduled for public inspection and sale.

(d) For all motor vehicles above salvage condition or value, the minimum level of reconditioning required is as follows:

(1) For the driver and passenger compartment—

- (i) Remove debris;
- (ii) Vacuum floors and seats;
- (iii) Clean dashboard, instrument panel, armrests, door panels, and rear shelf;
- (iv) Remove Government stickers or decals without marring surface;
- (v) Clean ashtrays and glove compartment; and
- (vi) Wash windows.

(2) For the trunk—

- (i) Remove debris;
 - (ii) Vacuum; and
 - (iii) Position spare tire and tools.
- (3) For the engine compartment—
- (i) Remove debris;
 - (ii) Replenish lubricants and coolant to required levels and replace missing caps/covers; and
 - (iii) Charge battery, if necessary.

(4) For the exterior—

- (i) Remove Government stickers or decals without marring paint finish;
- (ii) Wash exterior, including glass, door jambs, tires, and wheel rims/covers; and
- (iii) Inflate tires to recommended pressure.

(e) Additional reconditioning of selected motor vehicles should be considered when such action is expected to substantially improve the return on the sale of a vehicle. Generally, a return of \$2 for each dollar invested should be estimated to justify additional reconditioning. Additional reconditioning should include some or all of the following:

(1) For the driver and passenger compartment—

(i) Shampoo seats, dashboard, headliner, door panels, and floor covering;

- (ii) Spray-dye floor carpets and mats;
- (iii) Polish where appropriate;
- (iv) Apply vinyl/rubber reconditioners where appropriate; and
- (v) Replace missing knobs, nameplates, and light lenses and/or bulbs.

(2) For the trunk—

- (i) Wash interior surface; and
 - (ii) Spray-dye mats.
- (3) For the engine compartment—
- (i) Clean major surface areas (air cleaner cover, battery, *etc.*);
 - (ii) Wash or steam clean, when necessary;
 - (iii) Replace air and fuel filters; and
 - (iv) Make minor adjustments and/or replacements to engine systems (electrical, fuel, cooling, *etc.*) to ensure that the vehicle will start and idle correctly during inspection by prospective purchasers.

(4) For the exterior—

- (i) Rotate tires, including the spare, to ensure that the best tires are displayed on the vehicle. Properly inflate, clean, and apply rubber conditioner or black tire paint to all tires;
- (ii) Wash and blacken wheel splash shields;
- (iii) Apply touch-up paint to nicks and scratches;
- (iv) Wax and polish;
- (v) Replace missing or damaged molding, nameplates, lenses, caps, mirrors, antennas, and wheel covers;
- (vi) Repaint exterior of vehicle to original factory color if scrapes, dings, *etc.*, are excessive;
- (vii) Repair minor body damage;
- (viii) Apply decorative molding and/or striping to add eye appeal; and
- (ix) Obtain State safety and/or emission control inspections, if required.

(f) Reconditioning, when possible, should be accomplished no earlier than the calendar week prior to the scheduled sale date.

(g) Agencies should contact the nearest General Services Administration Federal Supply Service Bureau office for information regarding the availability of reconditioning services.

(h) The expense of reconditioning is the responsibility of the holding agency.

§ 101-45.004 All terrain vehicles.

(a) Three-wheeled all terrain vehicles (ATVs) may be offered for public sale only after they have been mutilated in a manner to prevent operational use.

(b) Four-wheeled ATVs no longer needed by the Government can be exchanged with a dealer under the provisions of part 102-39 of the Federal

Management Regulation. If the unit cannot be exchanged, four-wheeled ATVs may be offered for public sale only after they have been mutilated in a manner to prevent operational use.

CHAPTER 102—FEDERAL MANAGEMENT REGULATION

2. Part 102-38 is added to subchapter B of chapter 102 to read as follows:

PART 102-38—SALE OF PERSONAL PROPERTY

Subpart A—General Provisions

Sec.

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102-38.15 Who must comply with these sales provisions?

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102-38.45 What are our responsibilities in selling personal property?

102-38.50 What must we do when we suspect violations of 40 U.S.C. 559, fraud, bribery, or criminal collusion in connection with the disposal of personal property?

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102-38.60 Who is responsible for the costs of care and handling of the personal property before it is sold?

102-38.65 What if we are notified of a Federal requirement for surplus personal property before the sale is complete?

102-38.70 May we abandon or destroy personal property either prior to or after trying to sell it?

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Authority: 40 U.S.C. 545 and 40 U.S.C. 121(c).

Subpart A—General Provisions

§ 102-38.5 What does this part cover?

This part prescribes the policies governing the sale of Federal personal property, including—

(a) Surplus personal property that has completed all required Federal and/or donation screening; and

(b) Personal property to be sold under the exchange/sale authority.

Note to § 102-38.5: You must follow additional guidelines in 41 CFR parts 101-42 and 101-45 of the Federal Property Management Regulations (FPMR) for the sale of personal property that has special handling requirements or property containing hazardous materials. Additional requirements for the sale of aircraft and aircraft parts are provided in part 102-33 of this chapter.

§ 102-38.10 What is the governing authority for this part?

The authority for the regulations in this part governing the sale of Federal personal property is 40 U.S.C. 541 through 548, 571, 573 and 574.

§ 102-38.15 Who must comply with these sales provisions?

All executive agencies must comply with the provisions of this part. The legislative and judicial branches are encouraged to follow these provisions.

§ 102-38.20 Must we follow the regulations of this part when selling all personal property?

Generally, yes, you must follow the regulations of this part when selling all personal property; however—

(a) Materials acquired for the national stockpile or supplemental stockpile, or materials or equipment acquired under section 303 of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2093) are excepted from this part;

(b) The Maritime Administration, Department of Transportation, has jurisdiction over the disposal of vessels of 1,500 gross tons or more and determined by the Secretary to be merchant vessels or capable of conversion to merchant use;

(c) Sales made by the Secretary of Defense pursuant to 10 U.S.C. 2576 (Sale of Surplus Military Equipment to State and Local Law Enforcement and Firefighting Agencies) are exempt from these provisions; and

(d) Foreign excess personal property is exempt from these provisions.

§ 102-38.25 To whom do “we”, “you”, and their variants refer?

Unless otherwise indicated, use of pronouns “we”, “you”, and their variants throughout this part refer to the holding agency responsible for the sale of the property.

§ 102–38.30 How do we request a deviation from the provisions of this part?

Refer to §§ 102–2.60 through 102–2.110 of this chapter for information on how to obtain a deviation from this part.

Definitions**§ 102–38.35 What definitions apply to this part?**

The following definitions apply to this part:

Bid means a response to an offer to sell that, if accepted, would bind the bidder to the terms and conditions of the contract (including the bid price).

Bidder means any entity that is responding to or has responded to an offer to sell.

Estimated fair market value means the selling agency's best estimate of what the property would be sold for if offered for public sale.

Identical bids means bids for the same item of property having the same total price.

Personal property means any property, except real property. For purposes of this part, the term excludes records of the Federal Government, and naval vessels of the following categories:

- (1) Battleships;
- (2) Cruisers;
- (3) Aircraft carriers;
- (4) Destroyers; and
- (5) Submarines.

State Agency for Surplus Property (SASP) means the agency designated under State law to receive Federal surplus personal property for distribution to eligible donees within the State as provided for in 40 U.S.C. 549.

State or local government means a State, territory, possession, political subdivision thereof, or tax-supported agency therein.

Responsibilities**§ 102–38.40 Who may sell personal property?**

You may sell personal property as the holding agency or on behalf of another agency when so requested, or have the General Services Administration, a contractor, or another Federal agency conduct the sale for you, provided that only Federal officials authorized by your agency approve the sale and bind the United States.

§ 102–38.45 What are our responsibilities in selling personal property?

Your responsibilities in selling personal property are to—

(a) Ensure the sale complies with the provisions of Title 40 of the U.S. Code, the regulations of this part, and any other applicable laws;

(b) Issue internal guidance to promote uniformity of sales procedures;

(c) Assure that officials designated to conduct and finalize sales are adequately trained;

(d) Be accountable for the care and handling of the personal property prior to its removal by the buyer; and

(e) Adjust your property and financial records to reflect the final disposition.

§ 102–38.50 What must we do when we suspect violations of 40 U.S.C. 559, fraud, bribery, or criminal collusion in connection with the disposal of personal property?

If you suspect violations of 40 U.S.C. 559, fraud, bribery, or criminal collusion in connection with the disposal of personal property, you must—

(a) Refer the violations to the Inspector General of your agency and/or the Attorney General, Department of Justice, Washington, DC 20530, for further investigation. You must cooperate with and provide evidence concerning the suspected violation or crime to the investigating agency assuming jurisdiction of the matter; and

(b) Submit to the General Services Administration (GSA), Property Management Division (FBP), 1800 F Street, NW., Washington, DC 20406, a report of any compliance investigations concerning such violations. The report must contain information concerning the noncompliance, including the corrective action taken or contemplated, and, for cases referred to the Department of Justice, a copy of the transmittal letter. A copy of each report must be submitted also to GSA, Personal Property Management Policy Division (MTP), 1800 F Street, NW., Washington, DC 20405.

§ 102–38.55 What must we do when selling personal property?

When selling personal property, you must ensure that—

(a) All sales are made after publicly advertising for bids, except as provided for negotiated sales in §§ 102–38.100 through 102–38.125; and

(b) Advertising for bids must permit full and free competition consistent with the value and nature of the property involved.

§ 102–38.60 Who is responsible for the costs of care and handling of the personal property before it is sold?

You are responsible for the care and handling costs of the personal property until it is removed by the buyer or the buyer's designee. When specified in the terms and conditions of sale, you may charge costs for storage when the buyer is delinquent in removing the property.

§ 102–38.65 What if we are notified of a Federal requirement for surplus personal property before the sale is complete?

Federal agencies have first claim to excess or surplus personal property reported to the General Services Administration. When a bona fide need for the property exists and is expressed by a Federal agency, and when no like item(s) are located elsewhere, you must make the property available for transfer to the maximum extent practicable and prior to transfer of title to the property.

§ 102–38.70 May we abandon or destroy personal property either prior to or after trying to sell it?

(a) Yes, you may abandon or destroy personal property either prior to or after trying to sell it, but only when an authorized agency official has made a written determination that—

- (1) The personal property has no commercial value; or
- (2) The estimated cost of continued care and handling would exceed the estimated sales proceeds.

(b) In addition to the provisions in paragraph (a) of this section, see the regulations at §§ 102–36.305 through 102–36.330 of this subchapter B that are applicable to the abandonment or destruction of personal property in general, and excess personal property in particular.

Subpart B—Sales Process**Methods of Sale****§ 102–38.75 How may we sell personal property?**

(a) You may sell personal property upon such terms and conditions as the head of your agency or designee deems proper to promote fairness, openness, and timeliness. In selling personal property, you must document the required terms and conditions of each sale, including, but not limited to, the following terms and conditions, as applicable:

- (1) Inspection.
- (2) Condition and location of property.
- (3) Eligibility of bidders.
- (4) Consideration of bids.
- (5) Bid deposits and payments.
- (6) Submission of bids.
- (7) Bid price determination.
- (8) Title.
- (9) Delivery, loading, and removal of property.
- (10) Default, returns, or refunds.
- (11) Modifications, withdrawals, or late bids.
- (12) Requirements to comply with applicable laws and regulations.
- (13) Certificate of independent price determinations.

(14) Covenant against contingent fees.
 (15) Limitation on Government's liability.

(16) Award of contract.

(b) Standard government forms (*e.g.*, Standard Form 114 series) may be used to document terms and conditions of the sale.

(c) When conducting and completing a sale through electronic media, the required terms and conditions must be included in your electronic sales documentation.

§ 102–38.80 Which method of sale should we use?

(a) You may use any method of sale provided the sale is publicly advertised and the personal property is sold with full and open competition. Exceptions to the requirement for competitive bids for negotiated sales (including fixed price sales) are contained in §§ 102–38.100 through 102–38.125. You must select the method of sale that will bring maximum return at minimum cost, considering factors such as—

- (1) Type and quantity of property;
- (2) Location of property;
- (3) Potential market;
- (4) Cost to prepare and conduct the sale;
- (5) Available facilities; and
- (6) Sales experience of the selling activity.

(b) Methods of sale may include sealed bid sales, spot bid sales, auctions, or negotiated sales and may be conducted at a physical location or through any electronic media that is publicly accessible.

Competitive Sales

§ 102–38.85 What is a sealed bid sale?

A sealed bid sale is a sale in which bid prices are kept confidential until bid opening. Bids are submitted either electronically or in writing according to formats specified by the selling agency, and all bids are held for public disclosure at a designated time and place.

§ 102–38.90 What is a spot bid sale?

A spot bid sale is a sale where immediately following the offering of the item or lot of property, bids are examined, and awards are made or bids rejected on the spot. Bids are either submitted electronically or in writing according to formats specified by the selling agency, and must not be disclosed prior to announcement of award.

§ 102–38.95 What is an auction?

An auction is a sale where the bid amounts of different bidders are disclosed as they are submitted,

providing bidders the option to increase their bids if they choose. Bids are submitted electronically and/or by those physically present at the sale. Normally, the bidder with the highest bid at the close of each bidding process is awarded the property.

Negotiated Sales

§ 102–38.100 What is a negotiated sale?

A negotiated sale is a sale where the selling price is arrived at between the seller and the buyer, subject to obtaining such competition as is feasible under the circumstances.

§ 102–38.105 Under what conditions may we negotiate sales of personal property?

You may negotiate sales of personal property when—

(a) The personal property has an estimated fair market value that does not exceed \$15,000;

(b) The disposal will be to a State, territory, possession, political subdivision thereof, or tax-supported agency therein, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained by negotiation;

(c) Bid prices after advertising are not reasonable and re-advertising would serve no useful purpose;

(d) Public exigency does not permit any delay such as that caused by the time required to advertise a sale;

(e) The sale promotes public health, safety, or national security;

(f) The sale is in the public interest under a national emergency declared by the President or the Congress. This authority may be used only with specific lot(s) of property or for categories determined by the Administrator of General Services for a designated period but not in excess of three months;

(g) Selling the property competitively would have an adverse impact on the national economy, provided that the estimated fair market value of the property and other satisfactory terms of disposal can be obtained by negotiation, *e.g.*, sale of large quantities of an agricultural product that impact domestic markets; or

(h) Otherwise authorized by Title 40 of the U.S. Code or other law.

§ 102–38.110 Who approves our determinations to conduct negotiated sales?

The head of your agency (or his/her designee) must approve all negotiated sales of personal property.

§ 102–38.115 What are the specific reporting requirements for negotiated sales?

For negotiated sales of personal property, you must—

(a) In accordance with 40 U.S.C. 545(e), and in advance of the sale, submit to the oversight committees for the General Services Administration (GSA) in the Senate and House, explanatory statements for each sale by negotiation of any personal property with an estimated fair market value in excess of \$15,000. You must maintain copies of the explanatory statements in your disposal files. No statement is needed for negotiated sales at fixed price or for any sale made without advertising when authorized by law other than 40 U.S.C. 545; and

(b) Report annually to GSA, Personal Property Management Policy Division (MTP), 1800 F Street, NW., Washington, DC, 20405, within 60 calendar days after the close of each fiscal year, a listing and description of all negotiated sales of personal property with an estimated fair market value in excess of \$5,000. You may submit the report electronically or manually (see § 102–38.330).

§ 102–38.120 When may we conduct negotiated sales of personal property at fixed prices (fixed price sale)?

You may sell personal property at fixed prices when the head of your agency, or designee, determines in writing that such sale serves the best interests of the Government. You must publicize such sale to the extent consistent with the value and nature of the property involved, and the prices established must reflect the estimated fair market value of the property. Property is sold on a first-come, first-served basis. You may also establish additional terms and conditions that must be met by the successful purchaser.

§ 102–38.125 May we sell personal property at fixed prices to State agencies?

Yes, before offering to the public, you may offer the property at fixed prices (through the State Agencies for Surplus Property) to any States, territories, possessions, political subdivisions thereof, or tax-supported agencies therein, which have expressed an interest in obtaining the property. For additional information, *see* subpart G of this part.

Advertising

§ 102–38.130 Must we publicly advertise sales of Federal personal property?

Yes, you must provide public notice of your sale of personal property to permit full and open competition.

§ 102–38.135 What constitutes a public advertisement?

Announcement of the sale using any media that reaches the public and is appropriate to the type and value of personal property to be sold is considered public advertising. You may also distribute mailings or flyers of your offer to sell to prospective purchasers on mailing lists. Public notice should be made far enough in advance of the sale to ensure adequate notice, and to target your advertising efforts toward the market that will provide the best return at the lowest cost.

§ 102–38.140 What must we include in the public notice on sale of personal property?

In the public notice, you must provide information necessary for potential buyers to participate in the sale, such as—

- (a) Date, time and location of sale;
- (b) General categories of property being offered for sale;
- (c) Inspection period;
- (d) Method of sale (*i.e.*, spot bid, sealed bid, auction);
- (e) Selling agency; and
- (f) Who to contact for additional information.

Pre-Sale Activities**§ 102–38.145 Must we allow for inspection of the personal property to be sold?**

Yes, you must allow for an electronic or physical inspection of the personal property to be sold. You must allow prospective bidders sufficient time for inspection. If inspection is restricted to electronic inspections only, due to unusual circumstances prohibiting physical inspection, you must notify your General Services Administration Regional Personal Property Office in writing, with the circumstances surrounding this restriction at least 3 days prior to the start of the screening period.

§ 102–38.150 How long is the inspection period?

The length of the inspection period allowed depends upon whether the inspection is done electronically or physically. You should also consider such factors as the circumstances of sale, volume of property, type of property, location of the property, and accessibility of the sales facility. Normally, you should provide at least 7 calendar days to ensure potential buyers have the opportunity to perform needed inspections.

Offer to Sell**§ 102–38.155 What is an offer to sell?**

An offer to sell is a notice listing the terms and conditions for bidding on an

upcoming sale of personal property, where prospective purchasers are advised of the requirements for a responsive bid and the contractual obligations once a bid is accepted.

§ 102–38.160 What must be included in the offer to sell?

The offer to sell must include—

- (a) Sale date and time;
- (b) Method of sale;
- (c) Description of property being offered for sale;
- (d) Selling agency;
- (e) Location of property;
- (f) Time and place for receipt of bids;
- (g) Acceptable forms of bid deposits and payments; and
- (h) Terms and conditions of sale, including any specific restrictions and limitations.

§ 102–38.165 Are the terms and conditions in the offer to sell binding?

Yes, the terms and conditions in the offer to sell are normally incorporated into the sales contract, and therefore binding upon both the buyer and the seller once a bid is accepted.

Subpart C—Bids**Buyer Eligibility****§ 102–38.170 May we sell Federal personal property to anyone?**

Generally, you may sell Federal personal property to anyone of legal age. However, certain persons or entities are debarred or suspended from purchasing Federal property. You must not enter into a contract with such a person or entity unless your agency head or designee responsible for the disposal action determines that there is a compelling reason for such an action.

§ 102–38.175 How do we find out if a person or entity has been suspended or debarred from doing business with the Government?

Refer to the List of Parties Excluded From Federal Procurement and Nonprocurement Programs to ensure you do not solicit from or award contracts to these persons or entities. The list is available through subscription from the U.S. Government Printing Office, or electronically on the Internet at <http://epls.arnet.gov>. For policies, procedures, and requirements for debarring/suspending a person or entity from the purchase of Federal personal property, follow the procedures in the Federal Acquisition Regulation (FAR) subpart 9.4 (48 CFR part 9, subpart 9.4).

§ 102–38.180 May we sell Federal personal property to a Federal employee?

Yes, you may sell Federal personal property to any Federal employee

whose agency does not prohibit their employees from purchasing such property. However, unless allowed by Federal or agency regulations, employees having nonpublic information regarding property offered for sale may not participate in that sale (see 5 CFR 2635.703). For purposes of this section, the term “Federal employee” also applies to an immediate member of the employee’s household.

§ 102–38.185 May we sell Federal personal property to State or local governments?

Yes, you may sell Federal personal property to State or local governments. Additional guidelines on sales to State or local governments are contained in subpart G of this part.

Acceptance of Bids**§ 102–38.190 What is considered a responsive bid?**

A responsive bid is a bid that complies with the terms and conditions of the sales offering, and satisfies the requirements as to the method and timeliness of the submission. Only responsive bids may be considered for award.

§ 102–38.195 Must bidders use authorized bid forms?

No, bidders do not have to use authorized bid forms; however if a bidder uses his/her own bid form to submit a bid, the bid may be considered only if—

- (a) The bidder accepts all the terms and conditions of the offer to sell; and
- (b) Award of the bid would result in a binding contract.

§ 102–38.200 Who may accept bids?

Authorized agency representatives may accept bids for your agency. These individuals should meet your agency’s requirements for approval of Government contracts.

§ 102–38.205 Must we accept all bids?

No, the Government reserves the right to accept or reject any or all bids. You may reject any or all bids when such action is advantageous to the Government, or when it is in the public interest to do so.

§ 102–38.210 What happens when bids have been rejected?

You may re-offer items for which all bids have been rejected at the same sale, if possible, or another sale.

§ 102–38.215 When may we disclose the bid results to the public?

You may disclose bid results to the public after the sales award of any item or lot of property. On occasions when there is open bidding, usually at a spot

bid sale or auction, all bids are disclosed as they are submitted. No information other than names may be disclosed regarding the bidder(s).

§ 102–38.220 What must we do when the highest bids received have the same bid amount?

When the highest bids received have the same bid amount, you must consider other factors of the sale (e.g., timely removal of the property, terms of payment, etc.) that would make one offer more advantageous to the Government. However, if you are unable to make a determination based on available information, and the Government has an acceptable offer, you may re-offer the property for sale, or you may utilize random tiebreakers to avoid the expense of reselling the property.

§ 102–38.225 What are the additional requirements in the bid process?

All sales except fixed price sales must contain a certification of independent price determination. If there is suspicion of false certification or an indication of collusion, you must refer the matter to the Department of Justice or your agency's Office of the Inspector General.

Bid Deposits

§ 102–38.230 Is a bid deposit required to buy personal property?

No, a bid deposit is not required to buy personal property. However, should you require a bid deposit to protect the Government's interest, a deposit of 20 percent of the total amount of the bid is generally considered reasonable.

§ 102–38.235 What types of payment may we accept as bid deposits?

In addition to the acceptable types of payments in § 102–38.290, you may also accept a deposit bond. A deposit bond may be used in lieu of cash or other acceptable form of deposit when permitted by the offer to sell, such as the Standard Form (SF) 150, Deposit Bond—Individual Invitation, Sale of Government Personal Property, SF 151, Deposit Bond—Annual, Sale of Government Personal Property, and SF 28, Affidavit of Individual Surety. For information on how to obtain these forms, see § 102–2.135 of subchapter A.

§ 102–38.240 What happens to the deposit bond if the bidder defaults or wants to withdraw his/her bid?

(a) When a bid deposit is secured by a deposit bond and the bidder defaults, you must issue a notice of default to the bidder and the surety company.

(b) When a bid deposit is secured by a deposit bond and the bidder wants to

withdraw his/her bid, you should return the deposit bond to the bidder.

Late Bids

§ 102–38.245 Do we consider late bids for award?

Consider late bids for award only when the bids were delivered timely to the address specified and your agency caused the delay in delivering the bids to the official designated to accept the bids.

§ 102–38.250 How do we handle late bids that are not considered?

Late bids that are not considered must be returned to the bidder promptly. You must not disclose information contained in returned bids.

Modification or Withdrawal of Bids

§ 102–38.255 May we allow a bidder to modify or withdraw a bid?

(a) Yes, a bidder may modify or withdraw a bid prior to the start of the sale or the time set for the opening of the bids. After the start of the sale, or the time set for opening the bids, the bidder will not be allowed to withdraw his/her bid.

(b) You may consider late modifications to an otherwise successful bid at any time, but only when it makes the terms of the bid more favorable to the Government.

Mistakes in Bids

§ 102–38.260 Who makes the administrative determinations regarding mistakes in bids?

The administrative procedures for handling mistakes in bids are contained in FAR 14.407, Mistakes in Bids (48 CFR 14.407). Your agency head, or his/her designee, may delegate the authority to make administrative decisions regarding mistakes in bids to a central authority, or a limited number of authorities in your agency, who must not re-delegate this authority.

§ 102–38.265 Must we keep records on administrative determinations?

Yes, you must—

(a) Maintain records of all administrative determinations made, to include the pertinent facts and the action taken in each case. A copy of the determination must be attached to its corresponding contract; and

(b) Provide a signed copy of any related determination with the copy of the contract you file with the Comptroller General when requested.

§ 102–38.270 May a bidder protest the determinations made on sales of personal property?

Yes, protests regarding the validity or the determinations made on the sale of

personal property may be submitted to the Comptroller General.

Subpart D—Completion of Sale

Awards

§ 102–38.275 To whom do we award the sales contract?

You must award the sales contract to the bidder with the highest responsive bid, unless a determination is made to reject the bid under § 102–38.205.

§ 102–38.280 What happens when there is no award?

When there is no award made, you may sell the personal property at another sale, or you may abandon or destroy it pursuant to § 102–36.305 of this subchapter B.

Transfer of Title

§ 102–38.285 How do we transfer title from the Government to the buyer for personal property sold?

(a) Generally, no specific form or format is designated for transferring title from the Government to the buyer for personal property sold. For internal control and accountability, you must execute a bill of sale or another document as evidence of transfer of title or any other interest in Government personal property. You must also ensure that the buyer submits any additional certifications to comply with specific conditions and restrictions of the sale.

(b) For sales of vehicles, you must issue to the purchaser a Standard Form (SF) 97, the United States Government Certificate to Obtain Title to a Vehicle, or a SF 97A, the United States Government Certificate to Obtain a Non-Repairable or Salvage Certificate, as appropriate, as evidence of transfer of title. For information on how to obtain these forms, see § 102–2.135 of this chapter.

Payments

§ 102–38.290 What types of payment may we accept?

You must adopt a payment policy that protects the Government against fraud. Acceptable payments include, but are not limited to, the following:

(a) U.S. currency or any form of credit instrument made payable on demand in U.S. currency, e.g., cashier's check, money order. Promissory notes and postdated credit instruments are not acceptable.

(b) Irrevocable commercial letters of credit issued by a United States bank payable to the Treasurer of the United States or to the Government agency conducting the sale.

(c) Credit or debit cards.

Disposition of Proceeds

§ 102–38.295 May we retain sales proceeds?

(a) You may retain that portion of the sales proceeds equal to the direct costs and reasonably related indirect costs incurred in selling surplus personal property.

(b) You may retain all sales proceeds when—

(1) You have statutory authority to retain all proceeds from sales of personal property;

(2) You sold property acquired with non-appropriated funds as defined in § 102–36.40 of this subchapter B;

(3) You sold surplus Government property that was in the custody of a contractor or subcontractor and the contract or subcontract provisions authorize the proceeds of sale to be credited to the price or cost of the contract or subcontract;

(4) You sold property to obtain replacement property under the exchange/sale authority pursuant to part 102–39 of this subchapter B; or

(5) You sold property related to waste prevention and recycling programs, under the authority of Section 607 of Public Law 107–67 (Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Public Law 107–67, 115 Stat. 514). Consult your General Counsel or Chief Financial Officer for guidance on use of this authority.

§ 102–38.300 What happens to sales proceeds that we are not authorized to retain or that are unused?

Any sales proceeds that are not retained pursuant to the authorities in § 102–38.295 must be deposited as miscellaneous receipts in the U.S. Treasury.

Disputes

§ 102–38.305 How do we handle disputes involved in the sale of Federal personal property?

First contact your Office of General Counsel. Further guidance can be found in the Contract Disputes Act of 1978, as amended (41 U.S.C. 601–613), and the Federal Acquisition Regulation (FAR) at 48 CFR part 33.

§ 102–38.310 Are we required to use the Disputes clause in the sale of personal property?

Yes, you must ensure the Disputes clause contained in Federal Acquisition Regulation (FAR) 52.233–1 (48 CFR part 52) is included in all offers to sell and contracts for the sale of personal property.

§ 102–38.315 Are we required to use Alternative Disputes Resolution for sales contracts?

No, you are not required to use Alternative Disputes Resolution (ADR) for sales contracts. However, you are encouraged to use ADR procedures in accordance with the authority and the requirements of the Alternative Disputes Resolution Act of 1998 (28 U.S.C. 651–658).

Subpart E—Other Governing Statutes

§ 102–38.320 Are there other statutory requirements governing the sale of Federal personal property?

Yes, in addition to Title 40 of the U.S. Code the sale of Federal personal property is governed by other statutory requirements, such as the Debt Collection Improvement Act of 1996 (Public Law 104–134, sec. 31001, 110 Stat. 1321–358) and antitrust requirements that are discussed in § 102–38.325.

Antitrust Requirements

§ 102–38.325 What are the requirements pertaining to antitrust laws?

When the sale of personal property has an estimated fair market value of \$3 million or more or if the sale involves a patent, process, technique, or invention, you must notify the Attorney General of the Department of Justice (DOJ) and get DOJ's opinion as to whether the sale would give the buyer an unfair advantage in the marketplace and violate any antitrust laws. Include in the notification the description and location of the property, method of sale and proposed selling price, and information on the proposed purchaser and intended use of the property.

You must not complete the sale until you have received confirmation from the Attorney General that the proposed transaction would not violate any antitrust laws.

Subpart F—Reporting Requirements

§ 102–38.330 Are there any reports that we must submit to the General Services Administration?

Yes, there are two sales reports you must submit to the General Services Administration (GSA), Personal Property Management Policy Division (MTP), 1800 F Street, NW., Washington, DC 20405—

(a) *Negotiated sales report.* Within 60 calendar days after the close of each fiscal year, you must provide GSA with a listing and description of all negotiated sales with an estimated fair market value in excess of \$5,000 (see § 102–38.115). For each negotiated sale

that meets this criterion, provide the following:

- (1) Description of the property (including quantity and condition).
- (2) Acquisition cost and date (if not known, estimate and so indicate).
- (3) Estimated fair market value (including date of estimate and name of estimator).
- (4) Name and address of purchaser.
- (5) Date of sale.
- (6) Gross and net sales proceeds.
- (7) Justification for conducting a negotiated sale.

(b) *Exchange/sale report.* Within 90 calendar days after the close of each fiscal year, you must provide a summary report to GSA of transactions conducted under the exchange/sale authority under part 102–39 of this subchapter B (see § 102–39.75).

§ 102–38.335 Is there any additional personal property sales information that we must submit to the General Services Administration?

Yes, you must report to the General Services Administration's (GSA's) Asset Disposition Management System (ADMS), once that capability is established, any sales information that GSA deems necessary.

Subpart G—Provisions for State and Local Governments

§ 102–38.340 How may we sell personal property to State and local governments?

You may sell Government personal property to State and local governments through—

- (a) Competitive sale to the public;
- (b) Negotiated sale, through the appropriate State Agency for Surplus Property (SASP); or
- (c) Negotiated sale at fixed price (fixed price sale), through the appropriate SASP. (This method of sale can be used prior to a competitive sale to the public, if desired.)

§ 102–38.345 Do we have to withdraw personal property advertised for public sale if a State Agency for Surplus Property wants to buy it?

No, you are not required to withdraw the item from public sale if the property has been advertised.

§ 102–38.350 Are there special provisions for State and local governments regarding negotiated sales?

Yes, you must waive the requirement for bid deposits and payment prior to removal of the property. However, payment must be made within 30 calendar days after purchase. If payment is not made within 30 days, you may charge simple interest at the rate established by the Secretary of the Treasury as provided in section 12 of

the Contract Disputes Act of 1978 (41 U.S.C. 611), from the date of written demand for payment.

§ 102-38.355 Do the regulations of this part apply to State Agencies for Surplus Property (SASPs) when conducting sales?

Yes, State Agencies for Surplus Property (SASPs) must follow the regulations in this part when

conducting sales on behalf of the General Services Administration of Government personal property in their custody.

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